

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

JAMES McALPHIN
ADC #88328

PLAINTIFF

v.

No. 5:18-cv-213-DPM-JTK

HOLDER, Doctor, ADC, East Arkansas
Regional Unit, *et al.*

DEFENDANTS

ORDER

1. On *de novo* review, the Court adopts the partial recommendation, *No* 37, as modified. FED. R. CIV. P. 72(b)(3). McAlphin's objections, *No* 38, are partly sustained and partly overruled. The motions to dismiss, *No* 22 & *No* 28, are partly granted and partly denied.

2. McAlphin may proceed with his spinal pain claims against Holder and Stukeley. His other claims against them are dismissed without prejudice.

3. McAlphin's claims against Mansfield, Bland, and Woods are dismissed without prejudice. McAlphin says in his objections that Bland and Woods were involved in the allegedly improper care for his spinal pain, too. If that is the case, though, then he needs to request permission to amend his complaint to make that clear.

4. The modification: McAlphin may proceed with his spinal pain claims against Correct Care Solutions. McAlphin says that he is suing CCS “due to custom and policy of neglect amounting to a deliberate indifference to serious medical needs of inmates evidenced by multiple incidences of denied, delayed and/or inadequate treatment.” *No 6 at 4*. Whether McAlphin can prove up this claim remains to be seen. But at this stage, his allegations are sufficient to state a claim against CCS that goes beyond a *respondeat superior* theory. *Cf. Johnson v. Douglas County Medical Department*, 725 F.3d 825, 828 (8th Cir. 2013). McAlphin may therefore proceed with his spinal pain claim against CCS, too.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
United States District Judge

15 March 2019